NO. 85-937 (2)

NO.

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

October Term, 1985

STATE OF WEST VIRGINIA,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

AMICUS CURIAE BRIEF OF THE COMMONWEALTH OF VIRGINIA IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

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QUESTION PRESENTED

Whether the federal government is entitled to prejudgment interest on a contractual claim against a sovereign state.

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INTEREST OF THE AMICUS CURIAE

As a sovereign state, the Commonwealth of Virginia participates in numerous programs with the federal government under federal statutes which provide for cost sharing between the Commonwealth and the federal government. The potential liability for prejudgment interest on disputed contractual claims creates budgetary uncertainties and, in certain circumstances, could "chill" the Commonwealth's willingness to pursue good faith claims against the United States.

STATEMENT OF THE CASE

For the limited purpose of this amicus curiae brief, no lengthy discussion of the facts in this case is necessary. The contractual dispute between the United States and West Virginia arises from site preparation costs for temporary mobile homes to house victims of a natural disaster in West Virginia. The relevant statute, the Disaster Relief Act of 1970, § 226(a), 84 Stat. 1744, 1751, repealed by the Disaster Relief Act of 1974,

§ 603, 88 Stat. 160, 184, is typical of many federal statutes which allocate costs and responsibilities between a state and the federal government in the provision of federal funds or services. After sending bills and demands for the recovery of certain federal funds, limited to the principal amount of 4.2 million dollars, to West Virginia in the years following the disaster, the United States filed suit in 1978 in the United States District Court for the Southern District of West Virginia seeking recovery of the principal and prejudgment interest.

The district court below found West Virginia liable on the principal amount. In a separate ruling, the district court declined to award the United States 5.8 million dollars in prejudgment interest after balancing the equities between the parties. The United States Court of Appeals for the Fourth Circuit reversed the district court on the prejudgment interest issue holding that the federal government was entitled to prejudgment interest as a matter of right under the circumstances of this case. The Court of Appeals' holding is based on the application of the federal common law rule

allowing the United States to recover prejudgment interest against private parties in breach of contract actions. United States v. State of West Virginia, 764 F.2d 1028, 1030, 1031 (1985).

REASONS FOR GRANTING THE PETITION

1.

NO GENERAL STATUTORY AUTHORITY EXISTS FOR THE FEDERAL GOVERNMENT TO COLLECT PREJUDGMENT INTEREST ON A CONTRACTUAL CLAIM AGAINST A SOVEREIGN STATE.

The contractual obligation of West Virginia was incurred as a result of federal assistance provided pursuant to the Disaster Relief Act of 1970, 84 Stat. 1744, repealed in part by the Disaster Relief Act of 1974, S 603, 88 Stat. 160, 164. Both the Disaster Relief Act of 1970 and its legislative history are conspicuously silent on the authority of the government to collect prejudgment interest, or any interest, on debts arising from the rendition of services by federal agencies pursuant to the Act.

The silence of the Disaster Relief Act of 1970 on the prejudgment interest question is especially notable when one considers other federal statutes which provide for the sharing of costs between the federal government and a state. Selected federal statutes specifically provide for the assessment of interest against states. Two examples, cited in Perales v. United States, 598 F.Supp. 19, 24 (1984), include the Medicaid Act (42 U.S.C. § 1396(b)(d)(5)) and the Social Security Act (42 U.S.C. § 418(j)).

The express liability of a state for interest charges under certain federal statutes, and the absence of such liability in other statutes, creates a presumption that Congress has specified those areas in which states will be liable for interest on amounts owed the federal government. This presumption is supported by the language of this Court in Pennhurst State School and Hospital v. Halderman, 451 U.S. 1, 17 (1981):

> [L]egislation enacted pursuant to the spending power is much in the nature of a contract: in return for federal funds, the States agree to comply with federally imposed conditions. The legitimacy of Congress' power to legislate under the

> spending power thus rests on whether the State voluntarily and knowingly accepts the terms of the 'contract.' [Citations omitted]. There can, of course, be no knowing acceptance if a State is unaware of the conditions or is unable to ascertain what is expected of it. Accordingly, if Congress intends to impose a condition on the grant of federal moneys, it must do so unambiguously. [Citations omitted]. By insisting that Congress speak with a clear voice, we enable the States to exercise their choice knowingly, cognizant of the consequences of their participation.

The Debt Collection Act of 1982, 96 Stat. 1749, further supports the presumption that Congress has specified, by statute, those areas in which states will be liable for interest on contractual obligations to the United States. Section 11 of the Debt Collection Act of 1982 amended the Federal Claims Collection Act of 1966, 31 U.S.C. 3701 et seq., by mandating federal agency heads to charge a minimum annual interest rate on outstanding claims owed by "persons" to the federal government. States and local governments, however, are excluded by definition from those "persons" against whom interest must be assessed. 31 U.S.C. § 3701(c). The Debt Collection Act of 1982 is not applicable to

the contractual dispute in question because the contract was executed prior to the Act's effective date. 31 U.S.C. § 3717(g)(2). Nevertheless, the Debt Collection Act of 1982 indicates the legislative intent that states be considered a different class of debtor in accord with their sovereign status.

Neither the Disaster Relief Act of 1970 nor the Debt Collection Act of 1982 provides statutory authority for the federal government's claimed right to prejudgment interest on contractual claims against states. Such a right to prejudgment interest, if any, must, therefore, be based on a federal common law rule.

2.

NO FEDERAL COMMON LAW RULE ESTABLISHES THE PROPOSITION THAT THE FEDERAL GOVERNMENT IS ENTITLED TO PREJUDGMENT INTEREST ON A CONTRACTUAL CLAIM AGAINST A SOVEREIGN STATE AS A MATTER OF RIGHT AND, IN LIGHT OF THE CONGRESSIONAL INTENT EVIDENCED BY THE PROVISIONS OF THE DEBT COLLECTION ACT OF 1982, THE FEDERAL COURTS SHOULD REFRAIN FROM ESTABLISHING SUCH A RULE.

(A)

Federal Common Law Does Not Entitle The Federal Government To Prejudgment Interest On Claims Against Sovereign States.

In its unpublished opinion, the district court applied to this case the federal common law rule that the United States is entitled to prejudgment interest in commercial breach of contract disputes with private parties. The district court then, in the interest of federalism, balanced the existing equities between the parties and determined that the federal government was not entitled to prejudgment interest in this particular case. See United States v. West Virginia, 764 F.2d at 1031-1032. On review, the Court of Appeals dispensed with the balancing of equities analysis and found that the United States is entitled to prejudgment interest as a matter of right. Id. As authority for this holding, the Court of Appeals relied on Royal Indemnity Company v. United States, 313 U.S. 289 (1941). 724 F.2d at 1030-1031. In determining that the United States is entitled to prejudgment interest as a matter of right in this case, the Court of Appeals took the novel step of extending a rule formerly applicable only to private

parties to disputes between the federal government and sovereign states. The Court dismissed the status of West Virginia as a sovereign state as being, in effect, irrelevant. Id. at 1031-1032. This significant extension of a federal common law rule was undertaken without adequate consideration of the applicable statutory law, the applicable case law or the sovereign status of West Virginia. Furthermore, the Court of Appeals' holding is in direct conflict with the holding of the Court of Appeals for the Second Circuit on the same question in Perales v. United States, 751 F.2d 95 (1984).

In Perales, in a brief per curiam opinion, the Court of Appeals affirmed the district court's holding that there was no federal common law rule establishing the federal government's right to prejudgment interest in disputes with states "for substantially the reasons stated in the district court's opinion." 751 F.2d at 96.

In Perales v. United States, 598 F.Supp. 19 (S.D.N.Y. 1984), the U.S. Department of Agriculture assessed late payment interest charges against the New

York Department of Social Services based on claims arising from the state's administration of the federal Food Stamp Act which, like the Disaster Relief Act of 1970, provided for federal-state cost sharing. The federal government argued that the United States has a common law right to interest on such claims. In asserting this claim, the federal government relied on Royal Indemnity Company v. United States, supra, and other cases. The district court rejected those cases as unpersuasive because:

> They involve only the right to recover interest from a private party as an incident of damages for breach of a commercial contract. They were decided prior to the enactment of the Debt Collection Act of 1982. The cases in no way suggest that the United States is entitled to collect interest from a state agency on claims governed by a statute that does not authorize it to do so. To the contrary, they recognize that federal courts will fashion the measure of interest due the United States as an element of contractual damages only in the absence of an applicable federal statute. (Citations omitted.) 598 F.Supp. at 25.

In other words, the court expressly rejected the argument that Royal Indemnity Company and its progeny establish the right of the federal government to assess

interest against states on claims arising from federal-state cost sharing programs. The affirmation of that decision by the Court of Appeals for the Second Circuit is in direct conflict with the holding in the instant case by the Court of Appeals for the Fourth Circuit.

(B)

The Debt Collection Act of 1982 Evidences Congressional Intent That Sovereign States Not Generally Be Subject To Claims For Prejudgment Interest.

The right of the United States to collect interest in breach of contract claims against private litigants, established by Royal Indemnity Company and its progeny, was codified by the Debt Collection Act of 1982. As noted above, the Debt Collection Act of 1982 expressly excludes states from those "persons" against whom interest must be assessed. 31 U.S.C. §§ 3701(c), 3717. In areas in which Congress has spoken which were previously governed by federal common law rule, the need for such unusual exercise of lawmaking by federal courts, such as exercised by the Court below, disappears. See Milwaukee v. Illinois, 451 U.S. 304 (1981). In light of the Debt Collection Act of 1982 and contrasting

statutes which specifically provide for a state's liability for interest, the Court below was without any authority to establish a common law rule that the United States is entitled to prejudgment interest on claims against sovereign states.

CONCLUSION

On two occasions this Court has addressed questions of the federal government's right to interest on claims against states where the liability for such interest is not specified by statute or contract. In both cases, United States v. North Carolina, 136 U.S. 211 (1890), and Board of Commissioners v. United States, 308 U.S. 343 (1939), this Court rejected the federal government's claim of a right to interest. There is presented in this case, therefore, a crucial question relating to intergovernmental claims that has not been addressed by this Court since 1939. In light of the modern proliferation of federal statutes providing for federal-state cost sharing, the Commonwealth of Virginia respectfully suggests that this Court should

address this question and resolve the uncertainty created thereby, and address the conflicting decisions of the Courts of Appeals for the Second and Fourth Circuits. Accordingly, the Commonwealth of Virginia, as amicus curiae, supports the petition of the State of West Virginia and prays that this Court grant certiorari in this case.

Respectfully submitted,

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